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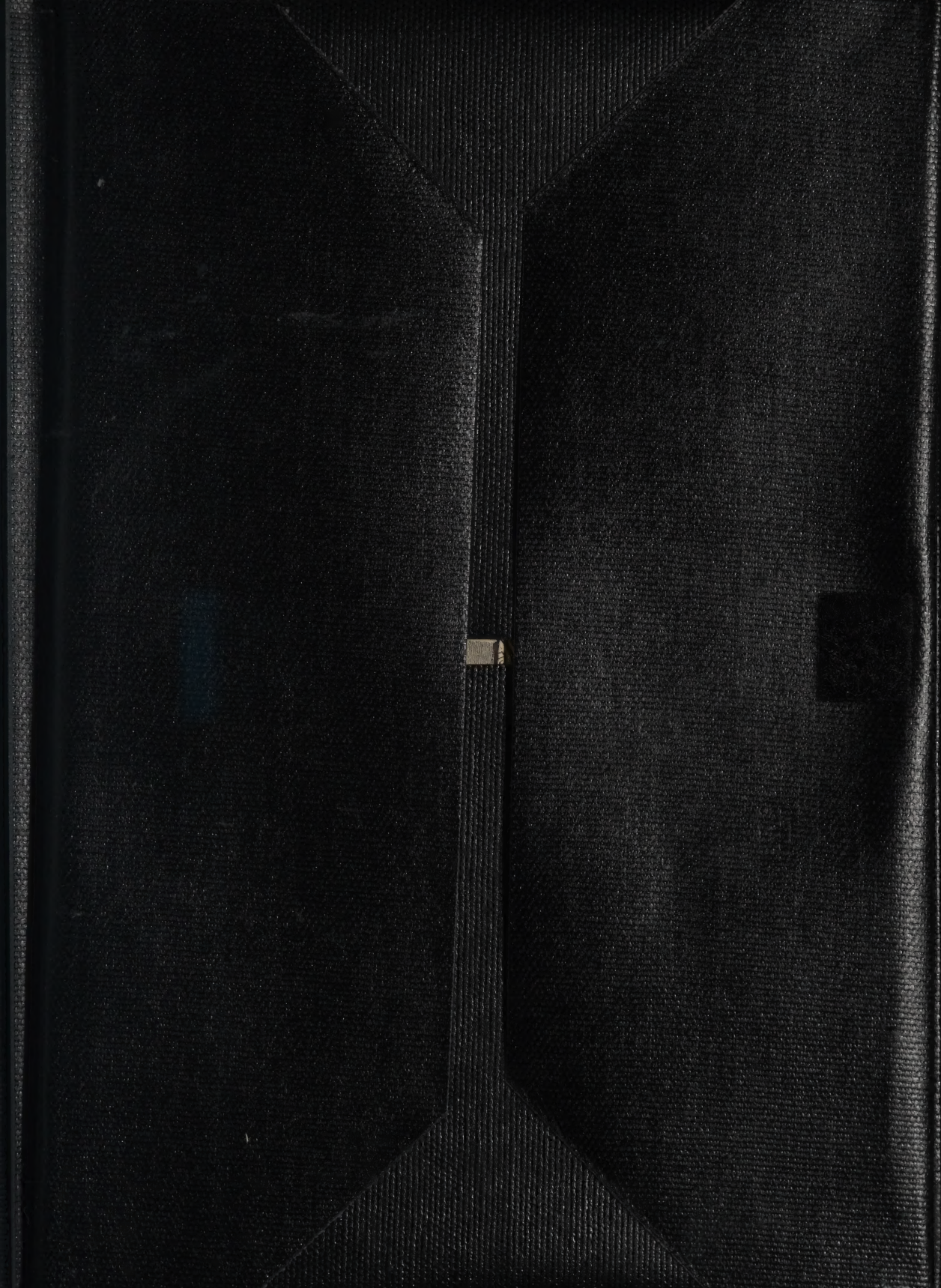


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Bench and Bar of Colonial Easton

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BENCH AND BAR OF COLONIAL EASTON

The subject chosen for discussion upon this occasion is the "Bench and Bar of Colonial Easton". The term bench and bar is here used in a collective sense as indicating the judges of a judicial tribunal, and the lawyers who are authorized to appear before that tribunal and conduct the trial of cases. The period covered by the discussion is from March 11th, 1752, the time of the creation of Northampton County, and the establishment of its first court at Easton, down to the time of the inauguration of the Federal Government on March 4th, 1789. It is believed that the subject will present features of interest to the minds of at least two classes of the community. To judges and lawyers it is always a matter, not only of curiosity, but of importance to study the first rude means devised to administer justice between man and man, while the student of history finds interest in contemplating the manners, customs, and modes of thought, once prevalent with reference to judicial subjects. It is, therefore, from the viewpoint of the student of history and not from any technical or legal point of view, that the subject will be discussed. In order to obtain a clear view of the subject it is necessary to briefly refer to the original historic background of Pennsylvania, of which our County was part.

When the British captured New Amsterdam (now New York) in 1664, Pennsylvania as a Dutch Colony followed its fortunes and became a British Colony by right of conquest. As early as 1666, William Penn endeavored to obtain a colony in America for the Quakers and, in 1680, he petitioned Charles the Second, King of Britain, for a grant of land for that purpose. The British Crown having become indebted to Penn's father, found it easier to pay the debt with land in America than with current money, and accordingly on March 4th, 1681, a patent was issued by Charles the Second to Penn for all the land within the present limits of Pennsylvania. Penn named his province Pennsylvania (Penn's Woods), in honor of his father. The charter gave him almost unlimited power. From the beginning the province had a full and well settled code of written law, consisting of the "Frame of Law" agreed upon in England, in 1682, the "Great Law" or "Body of Law" enacted at Chester in the same year, the "Act of Settlement" passed in Philadelphia in 1683

and eight chapters of statutes enacted the same year, the "Frame of Government" in 1683 and 1696, and the laws of 1701. These codes embodied a complete system and rendered more elaborate legislation unnecessary for a long time.

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The Great Charter of Penn provided "that the laws for the regulating and governing of property within said province, as well as for the descent and enjoyment of lands, as likewise for the enjoyment and succession of goods and chattels, and likewise as to felonies, shall be and continue the same as they shall be for the time being, by the general course of the law of our Kingdom of England, until altered." It is, therefore, upon the foundations of the common law of England that the common law of Pennsylvania has been built. When our ancestors emigrated from England they took with them such of the English principles as were convenient for the situation in which they were about to place themselves. It required time and experience to ascertain how much of the English law would be suitable to this Country. By degrees, as circumstances demanded, we adopted the English usages or substituted others better suited to our wants, till, at length, before the time of the Revolution, we had formed a system of our own. Under the grant of King Charles the Second, Penn held a proprietary estate of inheritance to the province, immediately from the Crown, but when the Revolution came the province threw off the dominion of the Mother Country and established the independent sovereignty of the State. This was accomplished by the Divestiture Act of 1779, which enacted that all estates of the late proprietaries of Pennsylvania should vest in the Commonwealth, the manors and private lands which had been surveyed for the proprietaries excepted.

The grant to Penn was dated March 4th, 1681, and was confirmed in April following by royal proclamation. Penn left England for his province in August, 1682, and arrived there in December. Soon after his arrival he divided his province into three counties, Philadelphia, Chester, and Bucks. With the exception of Lancaster, 1729, York, 1749, and Cumberland, 1750, no new counties were organized until those of Northampton and Berks, in 1752. At the time of its division from Bucks, Northampton County embraced all the land now contained in the counties of Northampton, Lehigh, Carbon, Monroe, Pike, Wayne and Susquehanna, and parts of Wyoming, Luzerne,

Schuylkill, Bradford and Columbia. It then contained more than 6,000 square miles, considerably larger in size than the present State of Connecticut.

The Act of March 11, 1752, creating the County, provided for the appointment of Justices to hold Courts of Quarter Sessions and Common Pleas "at Easton on Lehicton, in the forks of the River Delaware, until a Court House shall be built", and authorized Thomas Craig, Hugh Wilson, John Jones, Thomas Armstrong and James Martin to purchase land and build "a Court House and Prison sufficient to accommodate the public service of the said County and the ease and conveniency of the inhabitants". Under this Act, the Court House was built in Center Square, under a patent from the Penns, issued in 1762. From June 16th, 1752, to March 6, 1766, the courts were held in different public houses, as Jacob Bachman, Peter Kichline, Frederick Nungessor, Henry Bush, Frederick Shouse and others. The rents paid were from three to seven pounds a year, including wood and candles. The Court did not continue more than one or two days each session from 1752 to 1760. After that time business increased and three and four days were consumed every session. Later George Taylor, one of the signers of the Declaration of Independence, was appointed one of the Trustees for the erection of the Court House, the plan of which was taken from Carpenters' Hall in Philadelphia. The Carpenters' Company of that City was founded by a group of master carpenters, in order to increase their stock of knowledge or architecture, and it was in Carpenters' Hall that the First Continental Congress sat. Many local historic events took place in the newly erected Court House, and from its steps, on July 8th, 1776, the Declaration of Independence was first read to the people of Easton. On the south side of the Court House in the public Square, facing South Third Street, were erected the whipping post and pillory. These disappeared in 1790.

During the first twenty years there were probably not more than three or four trained lawyers in the whole Province, although there were twenty-three persons called attorneys, whose names are extant. These were, however, almost entirely laymen, with no legal education, and there are records of cases in which the plaintiff complained that the defendant had cornered all the lawyers in the Province. The Quakers, who sought in Pennsylvania relief from the tyranny of

English Judges, were unlikely to welcome any efforts to establish the lawcraft in power in their new home. It is not strange, therefore, that for seventy years after the settlement, the Courts of the Province were maintained with practically no lawyers present, either on the Bench or at the Bar. Horace Binney, (the leader of the Philadelphia Bar in the early Nineteenth Century), thus sums up the conditions:—"Of the primitive Bar of the Province of Pennsylvania we know next to nothing of the men who appeared at it from time to time up to the termination of the Colonial Government." Chief Justice Tilghman, who probably knew as much of the early Bar, said:—"From what I have been able to learn of the early history of Pennsylvania, it was a long time before she possessed lawyers of eminence. There were never wanting men of strong minds very well able to conduct the business of the courts without much regard to form."

As a substitute for a trained Bench and Bar the Quakers had from a very early date constituted a system of settlement of disputes of laymen. In 1683 provision was made for appointment of three common peacemakers in every precinct, whose arbitration was to be valid and final as a judgment. In 1705 an act was passed providing that parties might refer disputes to persons mutually chosen by them, in open court, whose award should have the effect of a verdict by a jury. Immense numbers of disputes were settled in this way. The existence of this referee system is probably accountable in large part for the very slow development of Pennsylvania law. Merchants and land-owners alike were content with the laymen's judgment without the aid of lawyers. Moreover, for lawyers as a class, Penn and his Quakers had an instinctive antipathy, as being men of strife and barratrous tendencies, and therefore opposed to the fundamental religious views of the new settlers.

The power to erect courts of justice and to appoint all judicial officers in the Province was by the express terms of the Charter conferred upon Penn as Proprietary. But, in deference to the wishes of the people, he was willing to forego to some degree the exercise of this extraordinary right. By the Frame of Government upon which he modeled his infant colony, he entrusted to the Governor and Council the erection of all necessary courts of justice, at such places and in such numbers as they should see fit, while he reserved to himself, for the term of his life only, the exclusive right to nominate to judicial office.

The County Courts of the Province first claim notice and attention. They had their origin in 1673 under the Government of James, Duke of York, and were established in every County "to decide all matters under twenty pounds, without appeal and to have exclusive jurisdiction in the administration of criminal justice". Irregular as these tribunals were, they were continued by Penn, upon his acquisition of Pennsylvania, as well calculated to administer justice to the people. Justices of the Peace were, from time to time, commissioned, some for the whole Province, some for the particular County, upon whom the duty devolved of holding the County Courts. Their number varied from time to time with the press of business or the caprice of the Executive. Some of these courts met quarterly, some monthly. No one learned in the law presided on the Bench and no attorney was allowed to practice for pay. Thus constituted, the County Courts exercised a jurisdiction of a singularly indefinite character, with no strict rules of practice or precedent; but for the most part they conformed to their former methods of procedure under the government of the Duke of York. Closely allied to the County Courts were the Orphans' Court, the Judges of which were the same as those presiding in the County Courts.

It remains to point out the establishment, practice, and procedure of these Courts at Easton, the County seat of the new County, during the Colonial period and down to the establishment of the Federal Constitution. Commissions for Justices of the new County were dated the 7th day of June, following.

The first court was held on the 16th day of June, 1752, and in the Sessions Book there is this record:—

"At a Court-of-Record of our Lord, the King, held at Easton, for the County of Northampton, the 16th day of June, in the twenty-sixth year of our Sovereign Lord—George 2nd, by the grace of God, King of Great Britain, France and Ireland, &c., A. D., 1752, before Thomas Craig, Timothy Horsefield, Hugh Wilson, James Martin and William Craig, Justices of Lord, the King, the peace in the said County to keep, as also divers trespasses and felons and other offenses in said County committed, to hear and determine."

This was the starting point for the Courts of our County. The new justices were all representative men living within the limits of the new County. Three of them, Thomas Craig, Hugh Wilson, and

William Craig, came from the Craig or Irish Settlement in Allen Township near Bath. It is said that the two Craigs were not related. They came to the County, in 1728, from the North of Ireland, and Hugh Wilson, who married Sarah Craig in Ireland, came with them. It is difficult to find much data relating to James Martin. From the best information obtainable, it seems that when the Country was first settled, all the region between the Delaware and Lehigh and extending back to the Blue Mountains was called the "Forks of the Delaware", by which name it was known for many years. In this region there were two Scotch-Irish Settlements, the first near Bath, named after Thomas and William Craig, and the second located in Upper and Lower Mt. Bethel, known as the Hunter Settlement. It is believed that James Martin, who gave Martin's Creek its name, belonged to the Hunter Settlement, and on an old tombstone in the burying ground at Three Churches, there is the name of James Martin, who died May 20th, 1767, aged 57 years. Timothy Horsefield was an early Moravian settler at Bethlehem, and quite prominent in the history of that settlement. He married a daughter of William Parsons, the founder of Easton, who was made Prothonotary and Clerk of the new County.

All of the new justices lacked legal training, but they were conscious of the dignity of their judicial positions. Great formality was used. It was the custom to escort them from their homes with constables in front and rear, the heads of the justices graced with three cornered cocked hats, while the people gazed with awe.

The last Court of Quarter Sessions for this County, under British authority, was held at Easton, on June 18th, 1776, "in the 16th year of the reign of our Sovereign Lord, George 3rd, by the grace of God, of Great Britain, France and Ireland, King, defender of faith, &c." But little was done at this term. No courts were held for one year. The next court was held June 17th, 1777, "for the County of Northampton, in the Commonwealth of Pennsylvania", before John Arndt, Thomas Sillyman, Thomas Hartman, Benjamin Depui, Samuel Rea, John McNair, Lewis Steckel, Frederick Leinback, Peter Moyer, Mathias Probst and Jacob Horner, Justices of the Peace. The entire proceedings of the session are contained on one page of the court record, upon which is this entry:—

"The Court being opened, the Sheriff, John Jennings, Esq., reported that no precepts or any other process had been delivered to him." The next Court of Quarter Sessions was held September 16, 1777, before Justices of the Peace, as above named. Little was done except to appoint constables and to recommend to the President and the Executive Council persons to keep public houses of entertainment, "provided they all had, or should take, the test oath." At December Session, 1777, one indictment was found, and the trial postponed until the next term, which was held March 17, 1778, before Justices, as above stated. Courts were held in June, September, and December of this year, and regularly thereafter. In 1752 there were thirteen justices appointed in all, and between the time of the creation of the County and 1789, the time of the inauguration of the Federal Government, there were appointed more than one hundred and twenty-five justices, too large a number to refer to in greater detail.

As stated, in all the colonies the Courts were composed of laymen, with the possible exception of the Chief Justice. It was not until the era of the War of the Revolution that it was deemed necessary or even advisable to have judges learned in the law. And practically throughout the Seventeenth Century, a lawyer or attorney was a character of disrepute and of suspicion, of whose standing or power in the community the ruling class, whether it was the clergy as in New England, or the merchants as in New York, Maryland, and Virginia, or the Quakers as in Pennsylvania, was extremely jealous. In many of the colonies, persons acting as attorneys were forbidden to receive any fee; in some, all paid attorneys were barred from the Courts; in all, they were subjected to the most rigid restrictions as to fees and procedure. It is a fact, therefore, that the development of the law as a profession and of lawyers as an influential class in the community was a matter of remarkably slow growth in the American colonies.

With the beginning of the 18th Century, however, a new set of factors began to work to produce the American Bar, which soon counteracted the old retarding influences. After the passing of James the Second and the establishment of peace on two continents, the American rapidly grew in wealth and influence. There was at the same time a very rapid extension of commerce, of export trade, of

shipbuilding, and fisheries. A class of rich merchants began to control the community. The practice of the law became more extended and disciplined. The precedents springing from local customs themselves became numerous and complicated, requiring a trained body of men to interpret them. And so arose the need for lawyers versed in law as a science.

The need was supplied at first by barristers imported from England. Soon, however, men of family and men of collegiate education in the colonies began to enter upon the career of a lawyer, producing a marked change in the character of the profession; and though law schools were lacking and law books were scarce, they developed to a considerable extent into masters of the common law. Another leading influence in changing the standard of ability and character among Members of the Bar, and in spurring the development of adequate modes of legal instruction in the colonies, was the growth of a class of Colonial lawyers, who received their education in the English Inns of Court, which were simply colleges for legal education. The lawyer of the late 18th Century was the product either of the English Inns of Court, or of the American Colleges. And it was this superior education and training which fitted the lawyer of the 18th Century to become the spokesman, the writer, the orator of the people when the people were forced to look for champions against the pretensions of the Royal Governors and Judges and of the British Parliament. So that when the War of the Revolution broke out, the lawyer, from being an object of contempt to restrain whom restrictive legislation was yearly necessary during the 17th Century, has become the leading man in every town in the Country, taking rank with the parish clergyman and the family doctor.

In the Colonial period there seems to have been but one method of legal instruction by which students could obtain a knowledge of the law, and that was through an apprenticeship in a lawyer's office. In *McMasters' History of the United States*, vol. 2, page 279, the author describes the course of study and the manner of admitting students to practice, as follows:—"The law student of that day usually began by offering his services to some lawyer of note, and if they were accepted paid a fee of a hundred dollars and began to read law books and copy briefs. In the course of two years he was expected to become familiar with Coke on Littleton, with Woods

Institutes of Civil Law, with Piggott on Conveyances, with Burn's Justice of the Peace, with Hawkin's Pleas of the Crown, with Salkeld's Reports, with Lillies Abridgments, and with some work on chancery practice, and some work on what now would be called international law. This accomplished, his patron would take him into Court, seat him at the lawyers' table, whisper to the gentlemen present and with their consent would rise and ask leave of the Court to present a young man for the oath of an attorney. The Court would ask if the Bar consented. The lawyers would then bow. The patron would vouch for the morals and learning of his young friend, and the oath would be administered by the clerk. This done, the new attorney would be introduced to the Bar and carried off to the nearest tavern where health and prosperity would be drunk to him in bumpers of strong punch."

Louis Gordon was the first lawyer admitted to practice in the County Courts. The following record of his admission to practice was made on the sessions' docket:—"16th June, 1752, Louis Gordon having represented to the Court that he was admitted an attorney to practice the law at Philadelphia, and in Bucks, and upon his prayer, admitted an attorney to practice in the Courts at Northampton." Gordon came to this Country from Aberdeen, Scotland, and in 1750 was employed in the office of Richard Peters of Philadelphia, Secretary of the Penns. A son of George Taylor married his daughter Elizabeth. When William Parsons died, Gordon took his place as Prothonotary and Clerk of the Courts. He died at Easton in 1777.

Judge James M. Porter in an historical address relating to the County said:—"Louis Gordon was the first attorney, then James Biddle, afterwards Judge Biddle, the father of John Marks Biddle of Reading, who was the King's Attorney at the organization of the County. The next was Robert Traill of Scotland, who settled here before the Revolution and was active in favor of the Colonies. He was a man of great probity and industry and of singular professional accuracy." Traill was admitted to the Bar in 1777.

The History of Northampton County thus speaks of him:—"He was the third lawyer in Easton in point of time, though indeed not second to any in point of legal ability and prominence through a career of a quarter of a century. His popularity was great in the County. In 1752 eight persons were admitted to practice in the

courts of the County." Though the County was territorially very large, the volume of business in the courts was quite small. One small docket of 361 pages contains all the actions from December, 1765 to December, 1781., a period of sixteen years. The attorneys whose names were most frequently attached to actions in the early years were Gordon, Read, Traill, Biddle, Price, Moland, Clymer and Robeson. From the date of the creation of the County down to the time of the inauguration of the Federal Government seventy-six persons were admitted to practice; many of whom were no doubt admitted for special occasions and not as permanent practitioners. There is a sad lack of historical data relating to these early members of the Bar, and this together with the limitations upon my subject for this occasion forbid more than a brief reference to them. There is one notable exception, however,—that of Samuel Sitgreaves. He was born in Philadelphia and studied law with James Wilson, a signer of the Declaration of Independence, and one of the ablest of the judges of the first Supreme Court of the United States. Soon after his admission to the Philadelphia Bar he removed to Easton, and in 1790 was elected a member of the convention to frame a new Constitution for Pennsylvania. He was afterwards elected a member of Congress and served in the last Congress of Washington's Administration and the first Congress of the Administration of John Adams. Subsequently he was appointed a Commissioner to settle claims under Jay's Treaty, and went to England for the purpose, where he discharged the duties of his appointment with great ability and fidelity. At the end of the administration of the elder Adams he retired from politics and resumed the practice of his profession at Easton; which he continued to do down to the time of his death in 1826, at the age of 64. He was not only a man of great ability and striking personal appearance, strict integrity, and commanding eloquence, but of most untiring and systematic industry. He was intimately connected with the growth and history of Easton, and at the time of his death was the president of the Easton Bank, now the Easton National Bank.

Before concluding this paper I may be permitted to refer to an incident relating to early conditions in Easton, and the courts of the County at that time. The first Court House was finished in 1764, at which time there were sixty-three houses in Easton. It was located in the centre of the open Public Square and at that time there was

a pond extending from the North-west corner of the Square to the corner of Fourth and Church Streets. In Henry's History of the Lehigh Valley, p. 82, it is stated:—"The pigs in warm weather were allowed to wallow in the pond near the Court House, and the sheep generally lay panting in the Court House shade, changing their location from West in the morning to the East in the afternoon, and from this cause the stench in the Court House was frequently intolerable." Just how long this condition was permitted to continue was not stated, but apparently that section of the Square was soon afterwards occupied by private residences and the pond passed out of existence. A similar incident, however, occurred on a more momentous occasion in Philadelphia, at the time of the signing of the Declaration of Independence, which took place in July, in the old State House, now known as Independence Hall. Congress had appointed a committee to prepare a declaration of independence, of which Jefferson was a member, and the Committee had designated Jefferson to prepare the declaration, which he had done and the Committee reported the same to Congress. In Curtis' Life of Jefferson the Author describes the congressional debate on the committee report, as follows:—"Jefferson sat silent throughout the entire debate, so conscious of his weakness in oratory that he did not allow himself to defend the pet passages in his momentous document. The responsibility of presenting and sustaining the report of the Committee was ably assumed by John Adams, whom Jefferson gratefully called "the Colossus" of the great debate. There is no telling how much the discussion might have been prolonged but for the interposition of a swarm of hungry flies, which came in through the open windows from a livery stable in the neighborhood and stung the legs of the honorable members through their silk stockings. Jefferson, who usually had very little sense of humor, used to tell the story with great amusement, and is authority for the statement that the annoyance became at length so great that a vote was demanded before the document had been discussed by many gentlemen who desired to speak upon it." Thus these early primitive conditions of pig stench and swarms of livery stable flies led to the discovery that they were effective means of limiting both judicial and congressional debate.

The stream of Pennsylvania history, comparatively speaking, is not very remote. In the early part of the Seventeenth Century the

entire State was a vast forest from the Delaware to Lake Erie, and no white man had then trod its soil. Its vast woods, great rivers and unique mineral resources, were then as unknown as the farthest ice floes of the Arctic Ocean. Today it has a population of nine millions and is the second largest industrial State in the greatest industrial nation in the world, with Northampton County the fifth in size of industrial output, notwithstanding its area is now about one-sixteenth its original size, owing to the formation of new Counties out of it. With the increase of population, business, and commerce, the administration of justice required a more artificial course of procedure and a more thoroughly trained Bench and Bar. The original Constitution of the Courts and the dictates of natural justice gave way to an orderly procedure, and the authority of well-considered precedents. The science of stating in logical and legal form the facts which constitute the plaintiffs' cause of action or the defendants' ground of defense, disclosing to the Court or jury, having to try the cause, the real matter in dispute, by insensible degrees obtained a foothold, narrowed the controversy, and led to more exact justice. The days of primitive simplicity had been left behind and forever.

